

**DUE PROCESS HEARING OFFICER'S DECISION**

PETITIONER: --- ----

Petitioner's Parent: --- ---- [FATHER]  
----  
Apache Junction, Arizona

Petitioner appears in propria persona

RESPONDENT: APACHE JUNCTION UNIFIED SCHOOL DISTRICT  
2525 South Ironwood Drive  
Apache Junction, Arizona 85220

Respondent's Attorney: Robert Haws  
GUST ROSENFELD P.L.C.  
201 East Washington, Suite 800  
Phoenix, Arizona 85004-2327

DATE OF HEARING: None. Telephonic Prehearing Conference was  
held February 21, 2003; Oral Argument on Motion  
to dismiss held March 26, 2003

HEARING OFFICER: C. Eileen Bond  
122 N. Cortez Suite 212  
Prescott, Arizona 86301

DATE OF DECISION: April 7, 2003

ISSUE: WHETHER --- ---- WAS PROVIDED A FAPE WHILE  
ENROLLED AT APACHE JUNCTION UNIFIED SCHOOL  
DISTRICT? WHAT IS THE APPLICABLE STATUTE OF  
LIMITATION? WHETHER THE ACTION IS BARRED BY  
THE STATUTE OF LIMITATION?

**I. PROCEDURAL HISTORY AND ISSUES**

Father filed a Model Complaint Form, dated January 24, 2003 and received by the Arizona Department of Education, Exceptional Student Services on January 27, 2003. The Complaint Form is signed by Father and Student. The signature lines are dated "11/30/02" and summarize the "complainable issue" is: "fraud, cheating, 1975 Fed law free appropriate education to --- all education denied to --- IEP failed to give --- his education".

Attached to the Form was a three page letter with attachments from Father to Pamela Nemeth, Equal Opportunity specialist, Department of Education [dated January 22, 2003 but stamped "received January 27, 2003"]. That letter covers allegations of deficiencies in the District, which relate to this Student and to the District at large. Many of these allegations would not have been the subject of due process.

This Hearing Officer was appointed by letter dated February 13, 2003.

An initial Telephonic Prehearing Conference was held on February 21, 2003. Father, Student and Student's fiancée, counsel for the District and a District representative were present on the phone conference with the Hearing Officer. The parties agreed that Student was born on February 14, 1979 and that he last attended school in the District in the summer of 1998, when he received his high school diploma. The Hearing Officer determined that the initial issue was whether the request for due process was barred by a statute of limitation. A briefing schedule was set out on that issue. Initial memoranda were exchanged on March 7, 2003. Responsive memoranda were exchanged on March 14, 2003. On March 14, 2003 Student provided a written clarification of the actions complained of via letter to the Hearing Office and counsel for the District. A second Prehearing Conference was scheduled for March 21 and continued to March 26, 2003. At that Conference the parties provided oral argument on the pending Motions.

Because the Hearing Officer determined that the IDEA due process request is barred by the applicable statute of limitation, no evidentiary hearing was scheduled.

## **II. FINDINGS OF FACT**

1. Student was born on ---. [Agreement at Prehearing Conference].
1. Student last attend "School" in the summer of 1998. [Agreement at Prehearing Conference].
1. Father did sign (but did not date) the IEP and acknowledgment that he had "received a copy of the procedural safe guards" in January, 1996. *Exhibit A to District's Response to Petitioner's Motion to Continue.* [Acknowledgment at Prehearing Conference]

1. Student did sign (but did not date) the IEP and Parent Conference Request in 1998. *Exhibits C and E to District's Response to Petitioner's Motion to Continue*. [Letter of March 14, 2003 and acknowledgment at Prehearing Conference]
1. There is no evidence of a complaint or request for due process being filed with the District or the Department of Education prior to January, 2003.

### III. APPLICABLE LAW

#### STATUTE OF LIMITATION

Congress enacted the IDEA "...to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; [and] to ensure that the rights of children with disabilities and parents of such children are protected ... ." 20 U.S.C. §1400(d)(1)(A) and (B). The federal law provides specific procedural safeguards to the children with a disability and their parents, including a grievance/complaint process at 20 U.S.C. §1415(b)(6); mediation at 20 U.S.C. §1415(b)(5); an impartial due process hearing at 20 U.S.C. §1415(f) and the right to file a civil action in federal district court at 20 U.S.C. §1415(i). The federal statute is silent, however, with regard to a time limitation on the initiation of these procedural alternatives.

Limitation provisions are nearly as critical to implementation of a fair judicial system as are the underlying causes of action. The public needs to know when their liability ends as well as when it begins. Arizona statute sets out limitation periods for all types of civil (non-criminal) actions at A.R.S. Title 12, Chapter 5. As our Court of Appeals stated in *Hall v. Romero*, 141 Ariz. 120,126 (App. 1984)

The very purpose of enacting a statute of limitations is to fix a limit within which an action must be brought and to prevent the unexpected enforcement of stale claims against persons who have been thrown off their guard by want of prosecution.

The absence of a limitation provision within a federal statute does not mean that there is no limitation. In the absence of a specific limitation statute, our federal appeals courts have borrowed from an analogous state statute or "...from another

federal statute if that statute is more analogous to the legislation than the state statutes". See: *DelCostello v. International Bhd. Of Teamsters* 462 U.S. 151, 171-72, 103 S.Ct. 2281, 2294-95, 76 L.Ed. 2d 476 (1983); *Dell v. Board of Education, TP High School Dist.* 113, 32 F.3d 1053, 1058 (7<sup>th</sup> Cir. 1994).

What limitation to apply to IDEA claims is not a new issue before federal appeal courts. Most Circuits, including our 9<sup>th</sup> Circuit, have decided what limitation to apply to IDEA claims.

The principal to be applied in determining the most appropriate limitation is set out in *Strawn v. Missouri State Board of Education and Missouri School for the Severely Handicapped*; 32 IDELR 118, 210 F. 3d 954 (8<sup>th</sup> Cir. 2000) the Circuit Court stated that: "... when a federal law contains no statute of limitations, courts may borrow from the most closely analogous state statute of limitations unless doing so would frustrate the policy embodied in the federal law on which the claim is based." (210 F.3d at 957) In *Strawn*, the Court approved application of a state two year statute of limitations for civil rights claims as "the most closely analogous cause of action and a two year period does not frustrate the federal policy embodied in the IDEA." (Id. at 957-58) The Court specifically rejected application of a five year "catch all" limitation because it would frustrate the federal policy favoring a quick resolution of IDEA claims. Discussing the underlying purpose of IDEA, the Court stated:

This statutory scheme mandating parental participation in an annual decision-making process demonstrates that Congress intended for parents to be actively implicated in the expeditious resolution of IDEA concerns. In addition, children protected by the IDEA benefit greatly from quick resolutions of disputes because lost education is a substantial harm, and that harm is exactly what the IDEA was meant to prevent. (Id. at 957)

The only Circuit Court which has applied a significantly longer limitation was the 1<sup>st</sup> Circuit in *Murphy v. Timberlane Regional Sch. Dist.*, 22 F.3d 1186 (1<sup>st</sup> Cir. 1994) which applied a six year catch all limitation to the issue of entitlement to compensatory educational services.

Our situation is governed by decisions in the 9<sup>th</sup> Circuit Court of Appeals. In *S.V. v. Sherwood School District*, 34 IDELR 283 (9<sup>th</sup> Cir. 2001) an Oregon plaintiff sought tuition reimbursement

for special education services he obtained at private school which he attended after his parents decided that the District was not providing FAPE. Plaintiff's appealed from the due process hearing officer's decision that the appropriate statute of limitation was Oregon's two year limitation for a "claim against a public body arising from a breach of duties imposed by a federal statute", and sought application of a six year limitation for an "action upon a liability created by statute, other than a penalty or forfeiture". The District Court reversed the hearing officer, but the Circuit Court reversed the District Court and elected to adopt the two year limitation because it is "...consistent with both the policy underlying the IDEA and with limitations periods adopted by most other circuits. A six-year period is not." (34 IDELR at 284) This decision also stands for the proposition that, when requested, the hearing officer does have jurisdiction to assign and enforce the limitation period.

In *Livingston School District Nos. 4 and 1 v. Keenan*, 82 F.3d 912, 914 (9<sup>th</sup> Cir. 1996) the Court applied the same concept to identify a thirty day Montana limitation for judicial review of administrative actions as appropriate for an action in federal court challenging a state administrative decision.

The 9<sup>th</sup> Circuit has already determined that the statute applicable to IDEA cases in Arizona is the one year limitation found at A.R.S. §12-541 "for a liability created by statute, other than a penalty or forfeiture". In *Dreher v. Amphitheater Unified School District*, 22 F. 3d 228 (9<sup>th</sup> Cir. 1994) the southern Arizona school district had refused to grant a due process hearing to determine financial responsibility for a child's speech therapy which was provided outside the District and contrary to programs prepared by the District.

Because the [IDEA] Act does not specify a statute of limitations, we must look to Arizona's statute of limitations applicable to the most closely analogous state cause of action [citations omitted] We apply that statute of limitations unless it conflicts with underlying federal policies. ... (22 F.3d at 232)

The Court rejected the too short 35 day statute applicable to review of administrative decisions and applied the one year statute of limitations permitted for "liabilities created by statute, other than penalty or forfeiture." ARS §12-541. (*Id.* at 232)

The Court also discussed the principals surrounding accrual of the limitation. Citing *Alexopoulos v. San Francisco Unified Sch. Dist.*, 817 F.2d 551, 554-55 (9<sup>th</sup> Cir.1987) the Court continued:

According to federal law, the Plaintiff's cause of action accrued when they knew or had reason to know of the injury that constitutes the basis of their action.

...

...the focus of the question of accrual is not on what the Defendants thought, but rather on when Plaintiffs knew or had reason to know of the injury giving rise to their cause of action. (*Id.* at 232-233)

Clearly it is the identity of the limitation in combination with the actual length which determines its applicability. For example the 8<sup>th</sup> Circuit rejected Missouri's five year "catch all" limitation as too long in *Strawn v. Missouri State*, *supra*, while the 4th Circuit accepted Virginia's one year "catch all" limitation *Manning v. Fairfax County Sch. Bd.* (76 F.3d 235, 239 (1999)). Our 9<sup>th</sup> Circuit accepted Arizona's one year limitation for "liabilities created by statute, other than penalty for forfeiture" in *Dreher v. Amphitheater*, *supra*, but rejected the Oregon six year limitation for the same cause of action in favor of a shorter two year limitation for "claims arising for breach of duty imposed by a federal statute". In honoring the IDEA's policy of prompt and expeditious resolution of differences, our appellate courts have generally applied limitations of one and two years in length.

#### **ACCRUAL OF THE LIMITATION**

Father and Student claim procedural as well as substantive violations of the IDEA including failure of the District to notify Father of IEP meetings and re-evaluations. Father and Student further claim that the student "did not know he was cheated of a worthy education" until he recently overheard a conversation about his niece and realized he had been denied an appropriate education. They essentially argue that the cause of action did not accrue until the student realized he was deprived of a proper education. However, under IDEA, a request for due process may be - and usually is - filed by the parent or surrogate parent on behalf of the student. Some students on an IEP may never attain a level of sophistication sufficient to understand IDEA's procedural safeguards. Thus parents act in their stead to exercise procedural rights. Father acknowledged that he did receive some, if not all, information regarding his

son's IEP at least as recently as 1996. That was his opportunity to seek further information or to request due process. Further, there is no law cited or known to this Hearing Officer which implies that the limitation does not accrue until the student reaches majority, or until the parent realizes that the student's education was inadequate - if indeed it was. More than most actions, a short limitation is necessary and appropriate in IDEA matters because the deficiencies of an IEP can best be corrected when the IEP is current.

#### IV. CONCLUSIONS

1. The statute of limitation applicable to this matter is one year.
1. Student was last enrolled in the District in mid-1998.
1. Any cause of action, if there was one, accrued more than one year prior to filing for due process.
1. This due process request is barred by the limitation.

#### V. DECISION/ORDER

The request for due process is dismissed as untimely filed.

#### VI. APPEAL PROCEDURE

Either party has the right to appeal this Decision to the Office of Administrative Hearings within thirty five (35) calendar days after receipt of this Decision. (A.A.C. R7-2-405(H)(5) **Requests for appeal must be submitted in writing to the State Education Agency or to the Dispute Resolution Coordinator, Arizona Department of Education, 1535 West Jefferson, Phoenix, Arizona 85007** (A.A.C. R7-2-405(J)(1)).

DATED this 7TH day of April, 2003.

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C. Eileen Bond  
Due Process Hearing Officer

Copy of the foregoing Decision  
mailed by Certified and regular mail to:

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Apache Junction, Arizona

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